

DRAFT

19 March 1971

Dear Mr. Chairman:

The Secretary has asked me to reply to your letter of February 11, 1971 requesting our comments on a bill, S. 596, which would require the transmission to the Congress of international agreements other than treaties to which the United States becomes a party.

The Executive Branch agrees with the general purpose of this bill, which we understand is to insure that the Congress is appropriately informed of the conclusion by the United States of new international agreements if it is to carry out properly its constitutional responsibilities. However, in order to accomplish that purpose, we do not believe that legislation is either necessary or desirable.

Basically, legislation of this nature poses a significant constitutional problem as between the Executive Branch and the Congress.

The history of this problem goes back to the beginning of our Government and is well reviewed in Committee Prints of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, in 1958 and 1959, entitled, "The

Power of the President to Withhold Information From the Congress."

These documents present the considered views of the Attorney

General and give the history and the legal implications in great detail. The Attorney General's conclusion is summed up as follows on pages 3 and 4:

" . . . And any law passed by Congress, designed to compel the production of papers by heads of departments would necessarily have to comply with the constitutional requirement that the President is as supreme in the duties assigned to him by the Constitution, as Congress is supreme in the legislative functions assigned to it. In other words, Congress cannot, under the Constitution, compel heads of departments by law to give up papers and information, regardless of the public interest involved; and the President is the judge of that interest. . . ."

There is no question about the need for a full flow of information between the Executive and Legislative Branches of our Government which is not limited to international agreements. The Executive Branch is prepared to provide to the Legislative Branch the information which it requires for the performance of its constitutional function. However, we believe that the requirements of the two branches can be met by mutual confidence and cooperation and not by legislation which raises a serious constitutional issue.

For the reasons stated herein, the Department is opposed to enactment of S. 596.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.